IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

OP.No. 21585 of 2001(T)

PETITIONER:

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1. SRREDEVI.A. , AGED 27 YEARS, W/O.K.RAMANATHAN, MANNAYAMKATTU HOUSE, VITHANASSERY, NENMARA, PALAKKAD DISTRICT.

(PREVIOUS ADDRESS:
PANIKOOTIL HOUSE, NELLIYAMKUNNAM, ALATHUR, PALAKKAD DISTRICT)

2. JESSY J. KOLLANGADAN, AGED 28 YEARS, W/O.ANTO PAUL, CHAZHOOR, MANNUTHY, TRICHUR DISTRICT.

(PREVIOUS ADDRESS: KOLLENGADEN HOUSE, KOTTEKKAD, KUTTUR.P.O. TRICHUR DISTRICT)

3. SAJITHA.A.K. AGED 25 YEARS, D/O.AYYAPPANKUTTY NAIR, MELE KADAPUZHA , NEMAN P.O. THIRUVANANTHAPURAM.

BY ADV. SRI.M.P.KRISHNAN NAIR

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY CHIEF SECRETARY. GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY, GENERAL ADMINISTRATION SERVICES (D) DEPARTMENT, THIRUVANANTHAPURAM.

3. JAYALEKSHMI.T.M. CHANDRAYIL, PODIYATCHAL P.O., KANNUR - 670 307.

4. MINI K. KUTTIYAT HOUSE, PADIYATCHALP.O. KANNUR.

5. USHA NANDINI .K. PUTHENPURA HOUSE, CHITHALI.P.O., PALLAKKAD - 678 702.

6. MINI.M.R. SREE PADMAM, T.C. NO.29/274 (2) PETTHA POST. THIRUVANANTHAPURAM.

7. JISHA PAUL , ELAYIDATH HOUSE, KODENCHERY P.O. KOZHIKODE 673 580.

BY GOVERNMENT PLEADER V.T.K. MOHANAN
SRI.JOHN JOSEPH(ROY)
SRI.JEFRIN MANUEL
SRI.G.UNNIKRISHNON

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/3/2007, ALONG WITH WPC NO. 5726 OF 2004 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1; TRUE EXTRACT of page 1 to 6 and 17 to 22 of notification dated 25/11/1998.

EXT.P2: TRUE COPY OF LETTER DATED 20/12/2000.

EXT.P3: TRUE EXTRACT OF ORDER DATED 17/3/2001.

EXT.P4: TRUE COPY OF LETTER DATED 23/6/2001.

RESPONDENTS' EXHIBITS:

EXT.R2(A) & (b): TRUE COPY OF LETTER DT. 23/1/2001 & 3/2/2001.

EXT. R2(C) & (d): TRUE COPY OF LETTER DT. 20/12/2001 & 21/12/2001.

EXT.R2(E): TRUE COPY OF LETTER FROM KERALA SPORTS COUNCIL.

A.K. Basheer, J.

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OP.21585/2001 & W.P(C) 5726/2004

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Dated this the 29th day of March, 2007.

J U D G M E N T

In these writ petitions the petitioners are common. Their grievance is that they have been denied "priority in appointment to the posts ear-marked for sportsmen/women who have made achievements in sports/games disciplines" as notified by the Government of Kerala in Ext.P1 notification dated December 1, 1998. While O.P.No. 21585/2001 relates to 5 seats ear-marked for Handball for the period from 1992-96, W.P.5726/2004 is in respect of 10 seats ear-marked for the same discipline for the period 1997-2001.

2. It is contended by the petitioners that they were denied appointment though they had participated in several Handball Championships recognised by the Kerala Sports Council and other sports Organisations during the relevant period. As mentioned earlier, petitioners were not considered for appointment during the period 1992-96 and therefore they had filed W.P.No.21585/2001. Later, when fresh appointments were made for the period 1997-2001 also, the claim made by the petitioners was not considered. It was at that stage that they had preferred W.P.No. 5726/2004.

3. It is now brought to my notice that petitioner No.1 Ms.Sreedevi has got appointment as High School Assistant under the quota in question. Therefore learned counsel for the petitioners submits that he is pressing only the case of petitioners 2 and 3 at this stage.

4. As mentioned earlier Ext.P1 notification was issued by the Govt. of Kerala on December 1, 1998. Annexure I in Ext.P1 shows the

number of posts set apart for various disciplines indicated therein. 5 seats had been earmarked for Handball with which we are concerned in these cases. Annexure IV in Ext.P1 enlists the order of priority for selection. Serial Nos. 1 to 40 in the said list are in respect of disciplines in which there is participation at International level. In other words, serial Nos. 1 to 40 indicate that only those persons who had represented the nation in various disciplines indicated therein in International competitions will get priority over all others. It is the admitted position that the petitioners have not represented the Nation in Handball in any of the recognised international competitions. But their grievance is that respondents 3 to 7 in OP.21585/2001 had been given appointments overlooking their claim by virtue of their participation in Commonwealth Handball Championship, IVth Asian Handball Championship, Internatinal Handball Championship and South Asian Handball Championship. It is the case of the petitioners that these championships have not been included in Annexure IV priority list and therefore respondents 3 to 7 could not have been given appointment on the strength of their participation in those championships. However learned counsel for the petitioners submits that the petitioners do not seek any relief against respondents 5 to 7 and therefore their appointments may not be disturbed. But petitioners have a definite case that respondents 3 and 4 were given appointment against all norms and guidelines and also contrary to the priority as enlisted in Annexue IV to Ext.P1. According to the petitioners, the applications of respondents 3 and 4 were initially taken up for consideration by the Selection Committee. Therefore they were not called upon to produce

their certificates. However subsequently respondents 3 and 4 “were accommodated” on the basis of specific instructions issued by the Minister for Sports and Social Welfare and also the Chief Minister. The above submission has been made by the learned counsel with reference to the relevant files which were produced by the learned Government Pleader as directed by this Court.

5. Petitioners have filed an additional reply affidavit in WP.5726/2004 with specific reference to the documents contained in the two files. In the said affidavit reference has been made to the relevant documents, file notings etc. with specific reference to the page numbers. I do not deem it necessary to refer to all the documents or file notings etc. elaborately. I have carefully perused the file. I am satisfied that the applications of respondents 3 and 4 for appointment were considered on the directions issued by the Minister of the portfolio concerned and the Chief Minister.

6. It is contended by the petitioners that the special treatment given to respondents 3 and 4 is wholly illegal and unsustainable, inasmuch as the Championships or international tournaments in which they had allegedly participated were not enlisted in Annexure IV to Ext.P1. The above contention has not been denied or disputed by the official respondents. However it is contended by them that in Ext.P1 it is made clear in clause 1(i) that those sports persosn “who were members of the team which represented the country in International competitions conducted by recognised International Federations viz., Olympics, World Cup, Asian Games, Common Wealth Games, Universiad, Asian Championships and other International Competitions

cleared by the Government of India and in which a minimum of five countries having good standard participate and won first, second or third position in individual or team events." would be eligible to apply (emphasis supplied).

7. Learned Government Pleader submits that the competitions in which respondents 3 to 7 had participated viz., Commonwealth Handball Championship and Asian Handball Championship etc. were International Competitions cleared by the Government of India. He invites my attention to Ext.R2(e) in which it has been specifically stated that the 6th Common Wealth Youth Handball Championship 1995 held at Dakha in Bangladesh from 24-30 August was recognised by the Government of India as indicated in its letter dated September 19, 2005. In the said Championship, 8 countries viz., England, Hongkong, India, Kenya, Malaysia, Nigeria, Pakistan and Bangladesh had participated. It is also pointed out by the learned Government Pleader that the Kerala Sports Council had requested the Government of Kerala to include the said Championship in the list of tournaments which had been included in the priority list as Annexure IV to Ext.P1. A copy of the said communication sent by the Council is on record as Ext.R2(a). In short, the contention of the official respondents is that there was no illegality or irregularity in considering the applications submitted by respondents 3 to 7 for appointment, since they had admittedly represented India in competitions which were recognised by the Government of India. Though the above Championship or competition was omitted to be included in Annexure IV, the Government had reserved its right to consider those sports persons who

had participated in such international tournaments also for appointment as stipulated in clause 1(i) of Ext.P1 notification. It is further contended by the official respondents that the Government had considered the request of respondents 3 to 7 since they had already submitted their applications in response to Ext.P1 notification and their applications were found to be in order. What remained was only the question whether the Government include the above in the list of priority (Annexure IV).

8. Per contra it is pointed out by learned counsel for the petitioner that the Government could not have considered the applications of respondents 3 to 7 unless and until Annexure IV of Ext.P1 notification was suitably amended incorporating the competitions mentioned above in the list of priority, even assuming that such an amendment could have been made after the expiry of the last date for receipt of applications and that too after starting the selection process.

9. I have carefully considered the rival contentions of the parties. It is brought to my notice that respondents 3 to 7 had been in service for the last more than 6 years by virtue of appointment given to them. As noticed earlier, respondents 3 to 7 had participated in International competitions representing the country. Those international competitions were recognised by the Government of India too. It is true that those Championships were omitted to be included in Annexure IV. The technical or procedural flaw could have been easily rectified by the Government if only an appropriate corrigendum had been issued at the appropriate time. It is a fact that petitioners 2 and 3

might have got a chance to get appointment if respondents 3 to 7 had not walked away with orders of appointment under the same list, of course on the basis of their participation in International events. If the argument of the petitioners is accepted, respondents 3 to 7 might not have got appointment and petitioners might have landed the job though going by the priority their turn might have arisen lower down in the order.

10. Therefore in the peculiar facts and circumstances I am not satisfied that this is a fit case in which the appointments of respondents 3 and 4 are to be set at naught or nullified. However this is a fit case where the Government should consider the case of petitioners 2 and 3 sympathetically if they are found to be eligible to get appointment in terms of the priority indicated in Annexure IV to Ext.P1. It will be appropriate if the Government accommodates petitioners 2 and 3 in a suitable post, even if supernumerary posts are to be created. The Government shall consider the applications of petitioners 2 and 3 in the light of the observations made above and pass appropriate orders as expeditiously as possible at any rate within 3 months from the date of receipt of a copy of this judgment.

Writ Petitions are disposed of in the above terms.

A.K. Basheer
Judge.

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